87-137

No. -

Supreme Court, U.S.
FILED
JUL 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

STEPHEN C. MORIN,
APPELLANT,

v.

STEVEN PETRARCA,
APPELLEE.

On Appeal From the Supreme Court Of the State of Rhode Island

JURISDICTIONAL STATEMENT

JOSEPH E. MARRAN, JR., LTD.
JOSEPH EDWARD MARRAN, JR.*
MARTY CORBETT MARRAN
255 Main Street
P.O. Box 1383
Pawtucket, Rhode Island 02862
Attorneys for Appellant

* Attorney of Record

Blanchard Press, Inc., Boston, Mass. — Law Printers [617] 426-6690

I

QUESTIONS PRESENTED

I. In abolishing the common law actions for alienation of affections and criminal conversation, did the Rhode Island General Assembly deny the Appellant due process of law by giving the Act immediate effect, with no provision for seasonable commencement of previously accrued causes of action?

II. By allowing some previously accrued causes of action to be maintained beyond the effective date of the abolishing Act, while causing other, similarly situated causes to be dismissed, did the Rhode Island General Assembly deprive the Appellant of his right to equal protection?

TABLE OF CONTENTS

	Page
Question Presented	I
Opinion Below	2
Jurisdiction	2
Statute Involved	3
Constitutional Provision Involved	3
Statement of the Case	3
Federal Questions Presented Are Substantial	5
Conclusion	10
Appendix A	11
Appendix B	12
Appendix C	13
Appendix D	15

TABLE OF AUTHORITIES

Cases

Arnett v. *Kennedy*, 416 U.S. 134 (1974)	6
Atchafalaya Land Co. v. *F. B. Williams Cypress Co.*, 258 U.S. 190 (1916)	7
Campbell v. *Holt*, 115 U.S. 620 (1885)	6, 7
Ettor v. *Tacoma*, 228 U.S. 148 (1912)	7
Gibbes v. *Zimmerman*, 290 U.S. 326 (1921)	7
Lindsey v. *Normet*, 405 U.S. 56 (1972)	8
Logan v. *Zimmerman Brush Co.*, 455 U.S. 420 (1982)	9
Martinez v. *California*, 444 U.S. 277 (1980)	8
Mullane v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)	6
Parsippany Hills Assoc. v. *Rent Leveling Bd.*, __ N.J. __, 476 A.2d 271 (1984)	6
Pennsylvania Greyhound Lines, Inc. v. *Rosenthal*, 14 N.J. 372, 102 A.2d 587 (1954)	6
Schweiker v. *Wilson*, 450 U.S. 221 (1981)	8
Vitek v. *Jones*, 445 U.S. 480	6

Statutes

	Page
28 U.S.C. §1257(2)	2
§1 Public Laws of Rhode Island, 1985, Chapter 123	4, 7, 9
Sec. 1	4
Sec. 2	4
Sec. 3	4
General Laws of Rhode Island, §9-1-14	3, 4
§9-1-42	4, 5
§43-3-1	6
§43-3-22	9
Rhode Island Supreme Court, Rule 16	5

Constitutional Provision

Amendment XIV	3, 5, 6, 7, 10

In the
Supreme Court of the United States

OCTOBER TERM, 1987

No. -

STEPHEN C. MORIN,
APPELLANT,

v.

STEVEN PETRARCA,
APPELLEE.

On Appeal From the Supreme Court
Of the State of Rhode Island

JURISDICTIONAL STATEMENT

This appeal is taken from the Order of the Supreme Court of the State of Rhode Island, entered on April 24, 1987, denying and dismissing an appeal from the Order of the Superior Court For The County of Kent dismissing the Appellant's causes of action for alienation of affections and criminal conversation, and denying his motion for certification of certain constitutional issues to the Supreme Court of the State of Rhode Island.

Appellant submits herewith the Jurisdictional Statement as required by Rule 15 of the Rules of the Supreme Court of the United States to show that this Honorable Court has jurisdiction of the appeal, and that substantial federal questions are presented.

Opinion Below

No opinion was delivered by the Supreme Court of the State of Rhode Island. A copy of the Order denying and dismissing the Appellant's appeal thereto, Appeal No. 86-284, is reprinted as Appendix A of this Jurisdictional Statement. Copies of the Order of the Superior Court for the County of Kent denying the Appellant's motion for certification to the Supreme Court of the State of Rhode Island and dismissing his complaint in C.A. No. K 86-321 are reprinted herein as Appendices B and C, respectively.

Jurisdiction

This action was brought in the Superior Court of the State of Rhode Island for the County of Kent upon the Appellant's complaint for alienation of affections and criminal conversation. His complaint was dismissed therein, and his motion for certification to the Supreme Court of the State of Rhode Island denied by Order entered June 13, 1986. Appeal was timely taken to the Supreme Court of the State of Rhode Island, which thereafter, on April 24, 1987, entered its Order denying and dismissing that appeal.

Notice of Appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of the State of Rhode Island and the Clerk of the Superior Court for the County of Kent on June 29, 1987, with copies thereof to Counsel for the Appellee and to the Office of the Attorney General of the State of Rhode Island.

The jurisdiction of this Honorable Court to review the judgment of the Supreme Court of the State of Rhode Island by direct appeal is conferred by Title 28 United States Code §1257(2).

Statute Involved

The Rhode Island statute challenged by the Appellant on Fourteenth Amendment grounds is entitled "An Act Relating to Causes of Action," Rhode Island General Laws, Chapter 9-1, and is reprinted herein as Appendix D in the form in which it first appeared when passed by the Rhode Island General Assembly on June 14, 1985 as §1 Public Laws of Rhode Island, 1985, Chapter 123.

Constitutional Provisions Involved

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The Appellant brought a complaint in the Superior Court of the State of Rhode Island for the County of Kent on April 8, 1986, alleging that "over a long period of time prior to early April, 1985, and subsequent thereto, even up to the present date," the Appellee, Steven Petrarca had engaged in certain acts with the Appellant's wife[1] which gave rise to causes of action for alienation of affections and criminal conversation.

The Challenged Statute. After the Appellant's causes of action had accrued, but before he could bring his complaint[2]

[1] The Appellant and his wife were divorced by final decree of the Family Court of the State of Rhode Island for the County of Kent entered on June 24, 1986 in C.A. K 85-0457. She married the Appellee shortly thereafter.

[2] R.I.G.L. § 9-1-14 provided a one (1) year statute of limitations at the time Appellant's cause of action accrued.

the Rhode Island General Assembly passed §1 Public Laws of Rhode Island, 1985, Chapter 123, which amended General Laws of Rhode Island §9-1-14 by eliminating all reference to the period of limitations then governing actions for alienation of affections and criminal conversation.[3] This enactment also amended Rhode Island General Laws §9-1 by inserting a provision abolishing the causes of action for alienation of affections and criminal conversation.[4] Finally, this enactment recited that its provisions "...shall take effect upon passage, and shall be applied prospectively only and shall not be construed to abolish any action now pending in any court of the state including but not limited to any case presently on appeal to the Supreme Court of this State or any federal court or any case which may be remanded by the Supreme Court of this State or any federal court to a lower court for further proceedings."[5]

The Proceedings Below. On April 24, 1986 the Appellee moved the Kent County Superior Court to dismiss the Appellant's complaint, citing General Laws of Rhode Island §9-1-42, as amended, as controlling over the case. Appellant filed his motion to certify certain constitutional questions to the Supreme Court of the State of Rhode Island, and the parties submitted their respective memoranda.[6]

On June 9, 1986, upon the memoranda of the parties and after brief oral argument, the Kent County Superior Court denied the Appellant's motion for certification to the Supreme Court, and granted the Appellee's motion to dismiss the Appellant's cause of action. Appeal was timely taken therefrom to the Supreme Court of the State of Rhode Island.

---

[3] §1 P.L.R.I. 1985, Chap. 123, Sec. 1.

[4] §1 P.L.R.I. 1985, Chap. 123, Sec. 2.

[5] §1 P.L.R.I. 1985, Chap. 123, Sec. 3.

[6] The Appellant's "Memorandum In Opposition of Motion To Dismiss" in Kent County Superior Court cites and refers extensively to the Fourteenth Amendment, as well as to provisions of the Constitution of the State of Rhode Island, the General Laws of Rhode Island, and supporting cases, arguing that the provisions of § 9-1-42, as amended on June 14, 1985, are repugnant to his rights of due process and equal protection.

Pursuant to Rhode Island Supreme Court Rule 16, the parties submitted statements of their respective cases and brief summaries of the issues to be argued on appeal.[7] Once again, the Appellant invoked the Fourteenth Amendment and argued that the lower court's application of §9-1-42 to his previously accrued cause of action "deprived him of a property right without due process of law and denied him equal protection of the law."[8]

On April 22, 1987 the parties were heard in oral argument before a three member panel of the Supreme Court of the State of Rhode Island pursuant to a previous Order dated February 16, 1987, compelling the Appellant to appear and show cause why his appeal should not be denied and dismissed. On April 24, 1987, Order entered finally denying and dismissing the appeal, the Court opining that upon oral argument and review of the parties' memoranda no cause had been shown.

Federal Questions Presented Are Substantial

The core issue presented by this appeal is that of state legislative power *versus* individual property rights — the question can be phrased more specifically in terms of when does an individual's property right in a cause of action become "vested" so as to warrant Fourteenth Amendment protection?

The question is of universal import throughout the several states as it relates to those rights obtaining to an individual at the moment his cause of action accrues, and the protection to be afforded him against the invasion of those rights by arbitrary state action, either upon the state's failure to provide the individual with due process of law, or upon the state's classification of individuals with respect to the operation of its laws upon them.

---

[7] "...this document shall be concise, not exceeding five pages." Rhode Island Supreme Court Rule 16.

[8] Appellant's "Statement of the Case," Rhode Island Supreme Court Appeal No. 86-0284.

Due Process. That an accrued cause of action is a property interest worthy of protection under the Fourteenth Amendment is well-settled. *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 420 (1982). It is equally well-recognized that a state legislature may not authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards, and that the adequacy of those procedures must be analyzed in constitutional terms. *Vitek* v. *Jones*, 445 U.S. 480, quoting *Arnett* v. *Kennedy*, 416 U.S. 134 (1974).

The Appellant submits that causes of action accrued to him on April 9, 1985, and that the Rhode Island General Assembly's abolition of those causes of action, effective upon passage on June 14, 1985 cannot be held to have affected his right to bring his causes of action within the originally prescribed one-year period of limitations in the absence of some alternate provision by the General Assembly for an otherwise reasonable period of time in which he might have acted. This final and immediately effective preemption of the Appellant's property rights in accrued causes of action flies in the face of fundamental notions of due process, and stands in contravention of Rhode Island statutory guarantees upon which he reasonably might have relied.[9] The Constitution does not speak in terms of "vested rights", but it has been suggested that "...the concept it expresses is that of a present fixed interest which in right reason and natural justice should be protected against arbitrary state action — an innately just and imperative right that an enlightened free society, sensitive to inherent and irrefragable individual rights cannot deny. Such seems to be the principle of *Campbell* v. *Holt*, 115 U.S. 620 (1885)." *Pennsylvania Greyhound Lines, Inc.* v. *Rosenthal*, 14 N.J. 372, 102 A.2d 587 (1954), cited in *Parsippany Hills Assoc.* v. *Rent Leveling Bd.*, __ N.J. __, 476 A.2d 271, 275 (1984).

---

[9] General Laws of Rhode Island § 43-3-1. Effect of repeal on prior rights and proceedings. See also, General Laws of Rhode Island § 43-3-1. English statutes as common law, both reprinted herein as Appendix D.

Campbell v. *Holt* stands for the proposition that a state legislature may not give retroactive application to amendments to its statutes of limitations so as to deprive an individual of a vested right in real property. Similarly, a legislature may not operate prospectively with respect to amendment of its limitations statutes unless such an amendment allows the individual possessed of an accrued cause of action a reasonable time to act thereupon. *Atchafalaya Land Co.* v. *F. B. Williams Cypress Co.*, 258 U.S. 190 (1916). Also, the right to compensation for damage to property, once it has accrued, may not be defeated retroactively. *Ettor* v. *Tacoma*, 228 U.S. 148 (1912). It is submitted thus, that the General Assembly may not take away an accrued cause of action, whether it springs from contract, tort, or from the principles of the common law, without preserving the owner his substantial right to redress by some effective procedure. *Gibbes* v. *Zimmerman*, 290 U.S. 326 (1921).

Equal Protection. The second question brought by this appeal is whether the distinction made between causes of action brought, and causes of action accrued, in terms of the Rhode Island General Assembly's allowance of the former beyond the effective date of §1 Public Laws of Rhode Island, 1985, Chapter 123 survives the challenge that such a distinction is repugnant to the Equal Protection Clause of the Fourteenth Amendment.

The statute creates three classes of individuals with respect to its operation:

(A) Individuals with causes of action accrued and timely brought between June 14, 1984 and June 14, 1985.

(B) Individuals with causes of action accrued between June 14, 1984 and June 14, 1985, and brought after June 14, 1985.

(C) Individuals with causes of action acruing after June 14, 1985.

The Appellant does not challenge the right of the Rhode Island General Assembly to further the legitimate interests of the State and its citizenry by abolishing the common law actions for alienation of affections, criminal conversation and seduction, and that with respect to individuals falling into Category C above, that there has been no denial either of Due Process or Equal Protection. *Martinez* v. *California,* 444 U.S. 277 (1980).

Turning, however, to Categories A and B, the treatment accorded those who share the fact of an accrued cause of action is radically disparate; individuals falling into Category A are allowed to maintain and prosecute their accrued causes of action, while those falling into Category B, including the Appellant, are summarily denied redress, regardless of the relative merits of the claims belonging to individuals in either category. This Honorable Court has held repeatedly that state-created classifications must bear a rational relationship to legitimate government objectives. *Schweiker* v. *Wilson,* 450 U.S. 221 (1981), *Lindsey* v. *Normet,* 405 U.S. 56 (1972). In terms of the Appellant's challenge to this statute on both due process and equal protection grounds, there is a serious question as to whether this statutory scheme is justified by the State's interest in *immediately* abolishing common law actions which had existed for centuries undisturbed. The statute randomly deprives certain individuals of vested property rights in accrued causes of action, and presents a high risk that meritorious causes of action will be arbitrarily terminated. Furthermore, the statute arbitrarily classifies individuals with accrued causes of action solely upon the basis of whether the individual was fortuitous enough to have brought his cause of action before June 14, 1985, the date the statute was passed and became immediately effective. There was no provision for the continuation of then-running periods of limitation, or any other reasonable period of time in which the Appellant might

have acted. Moreover, the statute operates in utter disregard of the provisions of Rhode Island General Laws §43-3-22 governing the effect of repeal on prior-accrued rights. The State's interest seems neither compelling nor substantial in consideration of the utter violence the statute does to fundamental due process and equal protection rights. Considering that actions for alienation of affections, criminal conversation and seduction may well be anachronisms in today's society, the statute does arguably serve to effect public policy. However, the mere tautological recognition that the General Assembly "did that which it intended to do," does not end the analysis under equal protection. This Court has an obligation to view the classificatory *system* in an effort to determine treatment accorded to classes as arbitrary. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 420, 443 (BLACKMUN, J., concurring).

In this case the State of Rhode Island has statutorily converted similarly situated claims, sounding in the same common law actions and accruing within the same one-year period of time, into dissimilary ones, and then has used this arbitrary distinction as a basis for its classification. Regardless of the General Assembly's purpose in seeking to abolish these causes of action, the rationale behind the disequal treatment of similarly situated claims must amount to more than the exercise of a strained imagination. The connection between means and ends must have some objective basis. *Logan* v. *Zimmerman Brush Co.*, supra 443.

The Appellant respectfully submits that there is no rational basis for the classifications created by §1 Public Laws of Rhode Island, 1985, Chapter 123, and that said enactment should rightfully be struck down as repugnant to the Equal Protection Clause of the Fourteenth Amendment.

Conclusion

The federal questions presented by this appeal are substantial, and go to the very essence of the Fourteenth Amendment guarantees of Due Process and Equal Protection. It is therefore respectfully submitted that the questions raised herein are deserving of plenary consideration, with briefs on the merits and oral argument for their resolution, and thus, that probable jurisdiction should be noted.

Respectfully submitted,

JOSEPH E. MARRAN, JR., LTD.
JOSEPH EDWARD MARRAN, JR.*
MARTY CORBETT MARRAN
255 Main Street
P.O. Box 1383
Pawtucket, Rhode Island 02862
Attorneys for Appellant

* Attorney of Record

Date: July 21, 1987

Appendix A

0943d

SUPREME COURT
STATE OF RHODE ISLAND

No. 86-284-APPEAL

STEPHEN C. MORIN

v.

STEVEN PETRARCA

ORDER

This case was argued before a three-judge panel of this court on April 22, 1987 pursuant to an order directing the plaintiff to appear to show cause why his appeal should not be denied and dismissed.

After hearing the arguments of counsel and reviewing the memoranda submitted by the parties, it is the opinion of the court that no cause has been shown. Consequently, the plaintiff's appeal is denied and dismissed.

Entered as an Order of this Court this 24th day of April, 1987.

By Order,

s/ BRIAN BURNS
WALTER J. KANE, Clerk

Mrs. Justice Murray and Justice Shea did not participate.

Appendix B

STATE OF RHODE ISLAND
KENT, SC
SUPERIOR COURT

C.A. K 86-321

STEPHEN C. MORIN

v.

STEVEN PETRARCA

ORDER

This matter was in order for hearing before Mr. Justice DeRobbio on the defendant's motion to dismiss and for entry of judgment and on the plaintiff's objection thereto and motion for certification of the alleged constitutional issues to the Rhode Island Supreme Court; and after hearing thereon and in consideration thereof it is hereby

ORDERED

as follows:

1. That the plaintiff's complaint be and it hereby is dismissed;
2. That the plaintiff's motion for certification be and it hereby is denied;
3. That judgment may enter on the dismissal.

Enter:
s/ ERNEST W. RAPOSA,
Clerk.

By Order:
s/ ALBERT J. DEROBBIO,
Justice.

CERTIFICATION

I hereby certify that a copy of the within order has been mailed to Joseph E. Marran, Jr., Esquire, P.O. Box 1383, Pawtucket, Rhode Island, 02862, on June 12, 1986.

(s) DONNA M. SILVA

Appendix C

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
SUPREME COURT

APPEAL NUMBER: 86-284

STEPHEN C. MORIN

v.

STEVEN PETRARCA

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that STEPHEN C. MORIN, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final Order of the Supreme Court of the State of Rhode Island dated April 24, 1987, denying and dismissing the Appellant's appeal from the Order of the Superior Court of the State of Rhode Island, holden in the County of Kent, whereby his cause of action, K 86-321, was dismissed.

This appeal is taken pursuant to Title 28 of the United States Code, Section 1257(2).

Notice is hereby given the Attorney General of the State of Rhode Island, moreover, that the provisions of Title 28 of the United States Code, Section 2403(b) may be applicable in this matter.

Dated this 26th day of June, 1987.

STEPHEN C. MORIN,
By His Attorney,

JOSEPH E. MARRAN, JR., LTD.
(s) JOSEPH E. MARRAN, JR.
JOSEPH E. MARRAN, JR.
P.O. Box 1383
Pawtucket, Rhode Island 02862

PROOF OF SERVICE — AFFIDAVIT

I, JOSEPH E. MARRAN, JR., Attorney of Record for Stephen C. Morin, Appellant herein, depose and say that on the 26th day of June, 1987, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon Gerald C. DeMaria, Esquire at the offices of Higgins, Cavanagh and Cooney, Esqs., 123 Dyer Street, Providence, Rhode Island 02903, counsel of record for the Appellee herein, and upon James E. O'Neil, Esquire, the Attorney General of the State of Rhode Island, at his office located at 72 Pine Street, Providence, Rhode Island 02903, by mailing same, first class postage prepaid, in compliance with Rule 28.3 and Rule 28.4(c) of the Rules of The Supreme Court of the United States.

(s) JOSEPH E. MARRAN, JR.
JOSEPH E. MARRAN, JR.

Subscribed and Sworn to before me at Pawtucket, Providence County, State of Rhode Island this 26th day of June, 1987.

(s) RUTH S. BASCOMBE
RUTH S. BASCOMBE, Notary Public
My Commission will expire on
June 30, 1991.
[SEAL]

Appendix D

§1 PUBLIC LAWS OF RHODE ISLAND, 1985, CHAPTER 123

85-H 5267A am

Approved Jun. 14, 1985.

AN ACT RELATING TO CAUSES OF ACTION

It is enacted by the General Assembly as follows:

SECTION 1. Section 9-1-14 of the General Laws in Chapter 9-1 entitled "Causes of Action" is hereby amended to read as follows:

9-1-14. Limitation of actions for words spoken or personal injuries. — Actions for words spoken shall be commenced and sued within one (1) year next after the words spoken, and not after. Actions for injuries to the person shall be commenced and sued within three (3) years next after the cause of action shall accrue, and not after. ~~No action shall be commenced or prosecuted for alienation of affections of a spouse, or any child of the plaintiff and such spouse, nor for the loss of or damages to any rights or privileges based upon the marital relationship between the plaintiff and such spouse more than one (1) year after the cause of action shall have accrued nor, in any event, after the plaintiff and such spouse have lived separate and apart for one (1) year or more.~~

SECTION 2. Chapter 9-1 of the General laws entitled "Causes of Action" is hereby amended by adding thereto the following section:

9-1-42. Causes of action abolished. — No civil action shall be commenced or prosecuted for alienation of affection, criminal conversation or seduction, and said causes of action are hereby abolished.

SECTION 3. This act shall take effect upon passage and shall be applied prospectively only and shall not be construed to abolish any action now pending in any court of the state including but not limited to any case presently on appeal to the supreme court of this state or any federal court or any case which may be remanded by the supreme court of this state or any federal court to a lower court for further proceedings.

R.I.G.L. §43-3-1. English statutes as common law. — In all cases in which provision is not made herein, such English statutes, introduced before the Declaration of Independence, which have continued to be practiced under as in force in this state, shall be deemed and taken as a part of the common law thereof, and remain in force until otherwise specially provided.

History of Section. G.L. 1896, ch. 297, §3; G.L. 1909, ch. 366, §3; G.L. 1923, ch. 419, §3; G.L. 1938, ch. 306, §1; G.L. 1956, §43-3-1.

R.I.G.L. §43-3-22. Effect of repeal on prior rights and proceedings.—The repeal of any statute shall in no case affect any act done, or any right accrued, acquired or established, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect.

History of Section. G.L. 1896, ch. 26, §16; G.L. 1909, ch. 32, §16; G.L. 1923, ch. 32, §16; G.L. 1938, ch. 309, §16; G.L. 1956, §43-3-22.